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IN THE

Supreme Court of the United States

October Term, 1974
No. 74-729

GEORGIA PACIFIC CORPORATION,

Petitioner,

vs.

JANE E. REILLY (LE BRUN),

Respondent.

On Petition for a Writ of Certiorari to the United States Supreme Court.

Brief for Jane E. Reilly (Le Brun) in Opposition.

Opinions Below.

Respondent, Jane E. Reilly (Le Brun) filed an Application for Hearing before the California Workers Compensation Appeals Board alleging multiple injuries on February 16, 1971, while employed as a private secretary for Georgia-Pacific Corporation.

After numerous hearings, decision issued by the Trial Referee on March 26, 1974, finding that Jane E. Reilly (Le Brun) did, in fact, sustain compensable injury on February 16, 1971 to multiple areas of her body arising out of and occurring in the course and scope of her employment. In addition to an Award of

temporary disability, Respondent was awarded lifetime medical treatment, and was found to have sustained an overall permanent disability of 81¾%.

Petition for Reconsideration was filed by Petitioner on April 17, 1974. Respondent answered said Petition for Reconsideration on April 30, 1974. On October 11, 1974, Petitioner's Petition for Reconsideration was *denied* by the California Workers Compensation Appeals Board.

Petition for Writ of Review was filed by Petitioner with the California District Court of Appeal on or about July 11, 1974. Respondent answered said Petition on July 22, 1974. On August 15, 1974, the California Court of Appeal *denied* Petitioner's Petition for Writ of Review.

Petition for Hearing in the California Supreme Court was filed by Petitioner on or about August 25, 1974. Respondent Answered said Petition for Hearing on or about September 4, 1974. Petitioner's Petition for Hearing in the California Supreme Court was *denied* on September 12, 1974.

Jurisdiction.

On June 11, 1974, Petitioner's Petition for Reconsideration was denied by the Workers Compensation Appeals Board. This Decision became final by reason of the denial by the California Supreme Court of Petitioner's Petition for Hearing.

Petitioner seeks to invoke the jurisdiction of the Supreme Court of the United States under 28 U.S.C.A. Section 1975(3) (See p. 3, Petition for Writ of Certiorari to the Court of Appeal of California, Second Appellate District).

There is no Section 1975(3) in 28 United States Code Annotated, and as such, this answering Respondent cannot correctly respond to the jurisdictional basis for the filing of Petitioner's Petition for Writ of Certiorari.

Question Presented.

The only question presented for review by this Court is whether the California Workers Compensation Act is constitutional.

Statutes Involved.

The Workers Compensation Act is contained in *Article XX, Section 21 of the California Constitution.* In essence, the Statute creates a system of liability between employers and employees regarding injuries arising out of and occurring in the course and scope of one's employment.

Article XX, Section 21 of the California Constitution states:

> "The Legislature is hereby expressly vested with plenary power, unlimited by any provision of this Constitution, to create, and enforce a complete system of workmen's compensation, by appropriate legislation, and in that behalf to create and enforce a liability on the part of any or all persons to compensate any or all of their workmen for injury or disability, and their dependents for death incurred or sustained by the said workmen in the course of their employment, irrespective of the fault of any party. A complete system of workmen's compensation includes adequate provisions for the comfort, health and safety and general welfare of any and all workmen and those dependent upon them for support to the extent

of relieving from the consequences of any injury or death incurred or sustained by workmen in the course of their employment, irrespective of the fault of any party; also full provision for securing safety in places of employment; full provision for such medical, surgical, hospital and other remedial treatment as is requisite to cure and relieve from the effects of such injury; full provisions for adequate insurance coverage against liability to pay or furnish compensation; full provision for regulating such insurance coverage in all its aspects, including the establishment and management of a State compensation insurance fund; full provision for otherwise securing the payment of compensation; and full provision for vesting power, authority and jurisdiction in an administrative body with all the requisite governmental functions to determine any dispute or matter arising under such legislation, to the end that the administration of such legislation shall accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character; all of which matters are expressly declared to be the social public policy of this State, binding upon all departments of the State government.

The Legislature is vested with plenary powers to provide for the settlement of any disputes arising under such legislation by arbitration, or by an industrial accident commission, by the courts, or by either, any, or all of these agencies, either separately or in combination, and may fix and control the method and manner of trial of any such dispute, the rules of evidence and the manner

of review of decisions rendered by the tribunal or tribunals designated by it; provided, that all decisions of any such tribunal shall be subject to review by the appellate courts of this State. The Legislature may combine in one statute all the provisions for a complete system of workmen's compensation, as herein defined.

The Legislature shall have power to provide for the payment of an award to the state in the case of the death arising out of and in the course of the employment, of an employee without dependents, and such awards may be used for the payment of extra compensation for subsequent injuries beyond the liability of a single employer for awards to his employees.

Nothing contained herein shall be taken or construed to impair or render ineffectual in any measure the creation and existence of the industrial accident commission of this State or the State compensation insurance fund, the creation and existence of which, with all the functions vested in them, are hereby ratified and confirmed."

In 1935, the insurance provisions of the law were codified in the California Insurance Code (*Ins. C. Sections 11630-881*), and the remaining provisions were placed in the Labor Code in 1937 (*Labor Code Sections 3201-6002, 6100-49*).

California Labor Code Section 3202 states:

"The provisions of Division 4 and Division 5 of this Code shall be liberally construed by the courts with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

Statement of the Case.

A. The Facts.

On February 16, 1971, respondent's vehicle overturned on the Pomona Freeway. As a result of this accident, this 20-year-old employee sustained multiple injuries, including head injuries requiring numerous craniotomies to relieve pressure on her brain, and to remove subdural hematomas. Respondent was in a coma for some 30 days subsequent to the accident and sustained numerous injuries, not the least which were:

1. Organic brain damage;
2. Complete loss of vision in her right eye;
3. Cosmetic disability resulting from tracheotomies performed to allow proper breathing; drooping of her right eye; and, underactivity of her mouth;
4. Various other fractures, sprains and bruises.

The total permanent disability suffered by respondent amounted to 81¾%.

B. The Findings of Fact by the California Workers Compensation Appeals Board.

On March 26, 1974, the Honorable Referee, Romaine Harper issued her Findings of Fact and Award.

Respondent was found to have sustained an industrial injury arising out of and occurring in the course and scope of her employment.

The injury caused temporary disability during the period February 17, 1971 through August 21, 1973.

The injury caused permanent disability of 81¾%.

The injury caused a need for lifetime medical treatment and care.

The injury was not barred by the Statute of Limitations in that Petitioner furnished compensation benefits within the meaning of *California Labor Code Section 5405*.

On June 11, 1974 the California Workers Compensation Appeals Board denied Petitioner's Petition for Reconsideration, finding that Respondent did file her Application for benefits "well within the one year period prescribed by *California Labor Code Section 5405*" (Petitioner's Appendix B, p. 11, lines 18, 19).

C. The Decision of the California Court of Appeal.

The California Court of Appeal *affirmed* the California Workers Compensation Appeals Board's Findings that Respondent sustained injury arising out of and occurring in the course and scope of her employment and that Respondent's claim was not barred by the Statute of Limitations.

D. The Decision of the California Supreme Court.

The California Supreme Court *affirmed* the California Workers Compensation Appeals Board's Findings that Respondent sustained injury arising out of and occurring in the course and scope of her employment and that Respondent's claim was not barred by the Statute of Limitations.

ARGUMENT.

The constitutionality of the Workers Compensation Acts has been attacked on many and varied grounds.

On a single day, March 6, 1917, the United States Supreme Court approved the constitutionality of both an elective and compulsory system of Workers Compensation. These decisions determined the validity of Workers Compensation principles beyond any reasonable doubt. *New York Central Railroad v. White,* 243 U.S. 188, 37 S.Ct. 247, 61 L.Ed. 667 (1917); *Hawkins v. Bleakly,* 243 U.S. 210, 61 L.Ed. 678, 37 S.Ct. 255 (1917); *United States Mountain Timber Company v. Washington,* 243 U.S. 219, 37 S.Ct. 260, 61 L.Ed. 685 (1917).

The basic framework of American Compensation legislation has withstood constitutional attack based upon the asserted violation of one or more of the following constitutional guarantees: (1) due process of law; (2) equal protection of the laws; and (3) freedom of contract.

(1) Due Process of Law.

Virtually every conceivable objection to the constitutionality of the various compensation acts has been raised since the compensation principle was first introduced in the United States. One of the most frequent objections made is that the acts deprive a person of property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States and similar provisions of the various state constitutions. It is contended that the acts impose liability on the employer without his consent and without his fault.

However, the courts have held that there is no property interest in any common-law rules. Thus, the legislation was sustained for the reasons that the substantive rights given to employees, the limitations on liability given to employers, and the orderly commission procedure created for administration, are reasonable substitute remedies given in exchange for the actions and defenses possessed at common law. Such reasonable substitution of rights and remedies brought the legislation within the due process limitation.

The exercise of the police power is the principal constitutional basis for the enactment of workers compensation legislation. The majority of cases hold that such legislation comes under the police power of the states because it lessens the probability that an injured worker will become a public charge. The courts also point out that this type of legislation maintains the economic welfare of the people and promotes the state's interest in the security of those who are under the protection of its laws.

Madera Sugar Pine Co. v. I.A.C., 262 U.S. 499, 43 S.Ct. 604, 67 L.Ed. 1091 (1923);
United States Mountain Timber Co. v. Washington, supra;
Crowell v. Benson, 285 U.S. 22, 52 S.Ct. 285, 76 L.Ed. 598 (1932).

(2) Equal Protection of the Laws.

The courts have overruled the contention that compensation acts of the elective as well as the compulsory type deny equal protection of the laws or constitute class legislation. *Middleton v. Texas Power and Light Co.*, 39 S.Ct. 227, 249 U.S. 152, 63 L.Ed. 527 (1919).

(3) Freedom of Contract.

It has been urged that the compensation acts are unconstitutional because they impair the liberty, freedom or right to contract. The courts have held that the legislature in the proper exercise of its police power, has the right to promote the public welfare of its citizens even at the expense of certain private rights.

The strength of the police power lies in the fact that it is not a subject of contract; that it cannot be bartered or bargained away.

Needless to say, the California Workers Compensation Act does not impair a contract entered into *after* the act has become effective. *United States Mountain Timber Co. v. Washington, supra.*

In a sweeping and well-reasoned opinion, *Western Indem. Co. v. Pillsbury,* 2 I.A.C. 1026, 170 Cal. 686, 151 Pac. 398 (1915) (See also, *Hartford Accident and Indemnity Co. v. Industrial Accident Commission,* 216 Cal. 40, 13 P.2d 699 (1932)), the California Supreme Court declared the compulsory Compensation Act of 1913 (Boynton Act) to be a lawful exercise of the police power, and not to violate the "due process" and "equal protection" clauses of the Fourteenth Amendment of the Federal Constitution.

The Findings of the Workers Compensation Appeals Board upon questions of fact are conclusive and are not subject to review where there is any substantial evidence to support them. Western Pacific R. Company v. Industrial Accident Commission (1924) 193 Cal. 413, 224 Pac. 754.

> "This statement is, without any close competition, the number one cliche of compensation law, and occurs in some form in the first paragraph of

compensation opinions almost as a matter of course." *Larson's Workmen's Compensation Law, Volume 3, p. 247, §80.10.*

Despite this truism, Petitioner asserts Respondent's claim should be barred by the Statute of Limitations, despite contrary findings by:

(1) The California Workers Compensation Appeals Board;

(2) The California District Court of Appeal; and

(3) The California Supreme Court.

(4) For Argument's Sake, Let Us Consider Petitioner's Assertions Regarding the Statute of Limitations.

Petitioner's assertion that the Statute of Limitations constitutes a bar to recovery of benefits, must be tested by the effect of legislation dealing with the subject—and, cases interpreting said legislation. *The burden is clearly on Petitioners to establish the defense of the Statute of Limitations.*

California Labor Code Section 5409 states:

"Affirmative Defenses. The running of the period of limitations prescribed by this chapter is an affirmative defense and operates to bar the remedy and not to extinguish the right of the employee. Such defense may be waived. Failure to present such defense prior to the submission of the cause for decision is a sufficient waiver." (Stats. 1937, C. 90, p. 296, Section 5409).

Hanna in California Law of Employee Injuries and Workmen's Compensation, 2d Ed., Vol. 1, Section 5.07(9) states:

"An affirmative defense is one to which the burden of proof rests upon the party raising it. Or-

dinarily, such a defense must not only be specifically pleaded, but must be proven by a preponderance of the evidence. The following are made affirmative defenses by statute:

"(7) Statute of Limitations—that the employee failed to file his claim with the Appeals Board within the period of time prescribed by law."

Labor Code Section 5405 provides as follows:

"Medical, surgical, hospital and disability benefits. The period within which may be commenced proceedings for the collection of the benefits provided by Article 2 and 3, or both, of Chapter 2, or part 2 of this division is one year from:

(a) The date of injury; or

(b) The expiration of any period covered by payment under Article 3 of Chapter 2, part 2 of this division; or

(c) The date of last furnishing of benefits provided for in Article 2 of Chapter 2 of part 2 of this division." (Stats. 1937, C. 90, p. 295, Section 5405. Amended by Stats. 1947, C. 1034, p. 2307, Section 3).

The question then becomes did petitioners furnish benefits within the meaning of the Workers Compensation Act so as to make inoperative the claimed defense of the Statute of Limitations?

WE RESPECTFULLY SUBMIT THAT ALL THE EVIDENCE IN THIS CASE CLEARLY ESTABLISHES THE DEFENDANTS FURNISHED COMPENSATION BENEFITS BY THE PAYMENT OF SALARY AND BY THE PAYMENT OF THE COST OF MEDICAL TREATMENT FOR THE INDUSTRIAL INJURY SUSTAINED BY THE RESPONDENT ON FEBRUARY 16, 1971.

Factually, the Branch Manager, Mr. Phillip Kelly, knew that on February 17, 1971, *one day after the accident,* Respondent had been involved in an accident the prior day. Mr. Kelly testified:

> "(He) was told in the office at 8:00 A.M. the next morning that applicant (Respondent) had been in a bad accident and was in the hospital. It was common knowledge in the office when he arrived."

(*Minutes of Hearing and Summary of Evidence, July 5, 1973, p. 5, lines 10-11*) "Appendix 1".

Mr. Kelly knew Respondent was involved in a motor vehicle accident while purchasing the door prizes for the dealer's meeting. In his affidavit dated March 26, 1972, Mr. Kelly stated:

> "That on February 16, 1971, while in the employ of Georgia Pacific Corporation, she had left the office for the purpose of obtaining the door prizes and, while so engaged, was involved in a motor vehicle accident."

(*See Affidavit of Phillip Douglas Kelly, dated March 26, 1973, and "Filed 7-5-73, R. Harper Ref." p. 1, lines 26-28*) "Appendix 2".

The knowledge by the Branch Manager, Mr. Kelly, that the accident occurred while applicant was picking up the door prizes per his directions, the salary then paid to the applicant while she was off work are compensation benefits within the meaning of the provisions of *Labor Code Section 5405.*

As early as 1928 the California Courts have held, that the payment of wages during a period of disability constitutes the furnishing of compensation benefits. In the case of *London Guaranty and Accident*

Company v. Industrial Accident Commission (1928) 92 Cal.App. 298; 268 Pac. 670; 15 I.A.C. 161 the Court on page 301 stated:

> ". . . It has long been the rule of the Commission that, where, as here, an employee is totally disabled and his employer continues to pay him full wages during the period of his disability, *such payments do not constitute wages or gratuities, but are payments of compensation which operate to toll the Statute during their continuance.* (23 Cal.Jur. page 458; *Oders v. Great Western Electro Chemical Company*, 6 I.A.C. 95); and we find nothing unreasonable in the construction thus placed upon the terms of the act." (Emphasis ours).

In *Morrison v. Industrial Accident Commission* (1938) 29 Cal.App.2d 528; 85 P.2d 186; 3 C.C.C. 182, the petitioner (widow) was originally denied benefits, the Commission finding her claim barred by the Statute of Limitations. The decedent, a miner, had contracted silicosis while employed by defendant's mine company. He had been advised that the illness was related to his employment. Decedent worked regularly in the mine until August, 1934. He was then on leave 11 days with full pay. He was also on leave with full pay for 15 days in September, 1934. He then worked steadily until July, 1935, taking 11 days vacation that month on account of illness on full pay. He received full pay for August, 1935, but did not work in the mines. Applicant filed his claim for compensation on October 18, 1935. The Board found that decedent was

employed from 1927 to August, 1934 and from October, 1934 to July, 1935, and that:

> "The employee became disabled in August, 1934, from a condition which he was advised by a physician was the result of his occupation as a miner. His application was not filed until October 18, 1935, more than 6 months thereafter and the claim is barred, therefore, by the provision of Chapter 2, Part 4, Division 4, of the Labor Code, formerly Section 11 of Chapter 586 of the Laws of 1917. The claim of the application herein filed May 22, 1936, is likewise barred by the foregoing provisions."

On Appeal, the District Court of Appeal held that the claim was not barred by the Statute of Limitations and reversed the Workmen's Compensation Appeals Board. The Court held that because compensation was paid to the decedent as late as August 17, 1935, which was only 2 months prior to the time the claim was filed, the claim was timely filed. The Court went on to state on page 534 as follows:

> "We are convinced that the record contains no substantial evidence to support the findings of the Commission that the petitioner's claim is barred by the Statute of Limitations. On the contrary, the evidence is uncontradicted, that Mr. Morrison, while he was on sick leave in the month of July, 1935, was paid by The Original Sixteen to One Mining Company his full wages in the sum of $80.00, and that during the month of August, 1935, while he was on sick leave, *he was paid his full wages to the 17th of that month,* (em-

phasis ours) in the total sum of $85.00. Since the employer mining company had full knowledge of the fact that the claimant was afflicted with silicosis incurred in its mine in the course of his employment, from February, 1935, and that he was completely disabled from performing his service in July and August of that year, prior to the time that payments were made, *the last-mentioned payments under uniform authorities of California, are deemed to constitute the payment of compensation for his injury which has the effect of tolling the Statute of Limitations, and his claim is, therefore, not barred.* (emphasis ours) (See cases cited)."

In citing *Bulger v. Industrial Accident Commission* (1933) 218 Cal. 716; 24 P.2d 796; 19 I.A.C. 236, the Court in *Morrison, supra,* adopted the Supreme Court's language in *Bulger* as follows (3 C.C.C. 182, 185):

> *"There appears to be no case adjudicated by the courts on this particular point, but it has long been the rule of the Commission, that where, as here, an employee is totally disabled and his employer continues to pay him full wages during the period of his disability, such payments do not constitute wages or gratuities, but are payments of compensation which operate to toll the statute during their continuance . . . and we find nothing unreasonable in the construction thus placed upon the terms of the Act."* (Emphasis ours).

The petitioners, through their Branch Manager, Mr. Kelly—with the approval of the Regional Manager, Mr. Smith, provided Respondent with full salary sub-

sequent to the injury which occurred while performing a *"special errand"*. These benefits are considered compensation, and as such, Respondent's claim is not barred by the Statute of Limitations.

Subsequent to *Morrison, supra,* the California Courts rendered decisions in two major cases dealing with the Statute of Limitations. These cases are, *Henry E. Miheshah, petitioner v. W.C.A.B. of the State of California and Union Oil Company, respondents* (1972) 29 Cal.App.3d 337; 105 Cal.Rptr. 561; 37 C.C.C. 790 and, *Lockheed-California Company; Employers Mutual Liability Insurance Company of Wisconsin, a corporation v. W.C.A.B; William E. Cranch, respondent* (1973) 38 C.C.C. 227.

Miheshah involved a maintenance mechanic working for Union Oil Company. The employee drove his own truck to work on April 29, 1969.

> "At the end of the day, however, he drove from work in a Union Oil Company truck. The employee took the company truck, with permission, because he had to stop the following morning to pick up some parts for work. While on his way home, petitioner was involved in a serious collision and was badly injured."

The employer was self-insured for workmen's compensation.

> "The *employer* treated the injury as a non-industrial injury, and, over the next two years, the employee received extensive benefits from Union Oil Company and its group policy carrier. Petitioner was not informed by Union Oil that they had decided to treat his accident on a non-industrial basis."

The Petitioner was advised that his employment would be terminated on May 31, 1971. He was also advised his benefits would be terminated. He immediately consulted counsel and filed a claim on March 22, 1971, approximately two years after his accident.

The Workers Compensation Appeals Board found his claim barred by the Statute of Limitations.

The District Court of Appeal annulled the Workmen's Compensation Appeals Board's Opinion and Order After Reconsideration. The Court reasoned on page 339 as follows:

> "STATUTE OF LIMITATIONS
>
> Section 5405 sets the period within which proceedings may be commenced for collection of Workmen's Compensation benefits. The period set by Section 5404 is one year from the date of last furnishing of benefits provided for in Article 2 in Chapter 2 of Part 2, Division 4 of the Labor Code. Section 4600 details the expenses of medical and hospital care for which an employer is liable to his employee in cases of the latter's compensable injuries. The relevant part of Section 4600 reads as follows:
>
> > 'Medical, surgical, and hospital treatment . . . which is reasonably required to cure or relieve from the effects of the injury shall be provided by the employer . . .'
>
> *"If petitioner's accident were employment related, there is no doubt that Union Oil Company's contributions to its group insurance policy came within the scope of Section 4600, Union's partial payment of the insurance premiums, that is, accounted for payment of petitioner's medical expenses to the*

> *time of his termination.* The question remains, however, whether the petitioner's injuries were sustained within the course of his employment; this question was not decided by the Workmen's Compensation Appeals Board and was not a part of the writ arguments. *Because Union's contributions to petitioner's insurance coverage came within Section 4600, petitioner's application for Workmen's Compensation was timely filed under Section 5405.* The application was made immediately upon notification that benefits then being provided for medical treatment, as well as employment, would be terminated at the end of May. As discussed above, these benefits were within the scope of benefits (those given pursuant to Article 2, Chapter 2, Part 2, Division 4) which, by Section 5405, tolled the running of the Statute of Limitations." (Emphasis ours).

The Court stated that Petitioner's estoppel argument was unnecessary as the claim was timely filed. However, the Court did state that failure by the Respondent (Union Oil Company) to comply with the *Rules and Regulations of the Administrative Director* could very well constitute an estoppel from pleading the Statute of Limitations. *Section 9816* of the *Rules and Regulations of the Administrative Director* requires that hospitalized employees be given notice of payment or nonpayment of benefits. *Section 9817(d)* of the *Rules and Regulations of the Administrative Director* requires that:

> "Notice of rejection of liability *shall* (emphasis ours) be sent upon making the decision to deny liability" (to the injured employee).

However, the Court in dealing with the issue of estoppel specifically stated as follows:

> "*ESTOPPEL*
>
> Because it appears that Petitioner's claim was timely, his estoppel argument becomes unnecessary."

It is therefore clear that Miheshah was decided solely on the basis that the defendants furnished compensation benefits within the meaning of Labor Code Section 5405.

Are *Miheshah* and the present case factually and legally similar? The names could be interchanged, they are so similar, one may almost say identical. Let us view the similarities:

	MIHESHAH	REILLY
(1) Employer:	Self-Insured	aka LE BRUN Self-Insured
(2) Accident:	Special errand, vehicular	Special errand, vehicular
(3) Wages paid at the time the accident occurred:	Unknown	Yes
(4) Applicant hospitalized:	Yes	Yes
(5) Wages paid subsequent to the accident by employer:	Unknown	Yes
(6) Employer made contributions to group insurance policy subsequent to accident:	Yes—partially	Yes—in full
(7) Date of accident:	April 29, 1969	Feb. 16, 1971
Date claim filed:	March 22, 1971	March 29, 1973
Date employer advised applicant that he/she would be terminated:	Feb. or March '71	March 29, 1973

The factual situation in *Miheshah* and the present case are almost identical. *The policy of the self-insured employer subsequent to the accident was identical in that neither treated the accident as one arising out of and occurring in the scope of the employment,* when it was obvious that each was a compensable industrial injury. The principle of law enunciated in *Miheshah, must* apply to the present case.

Mr. Miheshah sustained an obvious compensable injury because he was driving a company truck. In the present case, at the direction of the Branch Manager, Mr. Kelly, Respondent sustained a compensable injury while picking up a registration book and door prizes at the specific direction of her employer. How can one conceivably advance the argument that Mr. Miheshah while driving a company truck was more clearly in the course of his employment at the time of his accident than the Respondent under the facts of the present case?

According to Petitioner's Exhibit "M", compensation benefits were furnished through February 26, 1973, when applicant was terminated from her employment. Application for compensation benefits was filed on March 29, 1973, well within the one-year requirement of Labor Code Section 5405.

The Court in *Morrison* adequately expressed its view of the Statute of Limitations when it said on page 187:

> "Compensation is an obligation created by law in accordance with justice. The Statute of Limitations is a mere rule which limits the time within which a claim must be presented. It is adopted for the purpose of encouraging diligence and preventing injustice. It is a mere defense which may be waived and *should not become a trap to defeat just claims.*" (Emphasis ours).

Subsequently, the District Court of Appeal in a further decision in *Morrison v. IAC*, 6 C.C.C. 21, dealing with the applicability of the Statute of Limitations and finding applicant's claim *not* to be barred stated on page 24 as follows:

> "If we are to construe the Workmen's Compensation Law liberally, as we are enjoined by law to do, . . ., this appears to be at least one situation where the rule should be invoked. *The liberality should be extended to the employee, and not the employer.*" (Emphasis ours).

In *Colonial Insurance Company, petitioner v. Industrial Accident Commission of the State of California & Nickles* (1945) 27 Cal.2d 437; 164 P.2d 490; 10 C.C.C. 321, the Court in denying the defense of the Statute of Limitations stated on page 439 as follows:

> "At the outset it must be remembered that the provisions of the Workmen's Compensation Law dealing with limitation of time within which proceedings for compensation may be commenced, like other parts of that law, are to be liberally construed to the end that beneficent features thereof shall not be lost to employees, and where provisions are susceptible of an interpretation either beneficial or detrimental to an injured employee, they must be construed favorable to the employee."

The *Cranch* case, *supra*, decided in 1973 is a reaffirmation of *Miheshah*. In *Cranch*, the Workers Compensation Appeals Board found the employee sustained an injury to his heart from June 23, 1969, through July 11, 1969. Application for Workers Compensation benefits was filed on July 6, 1971, almost two years after the date of injury. However,

> "Cranch received treatment for his heart injury from a group insurance plan for Lockheed employees, part of the premiums for which had been paid by Lockheed. The evidence further showed that the group health plan paid for treatment up to January 11, 1971. (p. 228)".

The insurance carrier raised the Statute of Limitations as a defense, claiming no benefits were furnished.

The Referee, the Workers Compensation Appeals Board, and the District Court of Appeal in a Writ-denied case held the employee's claim not to be barred by the Statute of Limitations. The employee contended that the Referee and the Workmen's Compensation Appeals Board properly determined that his claim was not barred by the Statute of Limitations because (p. 229):

> "(1) The defendants did not produce evidence showing the claim was barred; and, (2) The applicant applied for Workmen's Compensation benefits within one year after the last furnishing of medical treatment from a group health plan for which petitioning employer partially paid the premiums."

What more explicit mandate can our courts provide than *Miheshah* and *Cranch,* that when an employer pays for premiums on a group insurance policy and the group carrier provides medical treatment and care for an industrial injury, that said premiums paid by the employer, constitutes the furnishing of compensation benefits within the meaning of *Labor Code Section 5405.*

How the Petitioners, Georgia Pacific Corporation, can claim that they had no reason to know or even suspect

that the accident in which the Respondent was involved was going to be claimed or could be claimed to be industrial because of the time and place at which it occurred is unrealistic. *The petitioner's Branch Manager, Mr. Phillip Kelly, was aware that Respondent sustained her injuries while going to obtain the registration book pursuant to his direction and orders.* Mr. Kelly was one of the 210 branch managers employed by Georgia Pacific Corporation throughout the United States. This employer had some 35,000 employees. It is readily apparent that Mr. Kelly was in a position of considerable authority and control and in management hierachy. Is it not an established feature of our law that the principal is responsible for the acts of his agent? It is clear, that the employer *did* know of the Respondent's accident, and that the accident *was* related to her employment.

With this knowledge, what attempt was made by Petitioner to apprise the Respondent of her rights under the Workers Compensation Act? The answer is obvious in that the Petitioner did not follow the *Rules and Regulations of the Administrative Director, Sections 9816 and 9817*, and advise the insured employee that her claim was being denied and for good reason, because then her claim would have been filed immediately.

The most recent expression by the California Supreme Court on the issue of the Statute of Limitations appears in *Reynolds v. W.C.A.B. and P. G. and E., SF 23119, filed November 4, 1974.*

Willard P. Reynolds, while loading heavy timbers for PG&E, twice one day suffered chest and arm pains. Although he requested assistance, none was provided, and later the same day he had a severe heart attack that in-

capacitated him for one year. He paid his own medical costs and received disability payments from his own insurance policy. Nearly three years later, at the suggestion of a relative, he applied for workmen's compensation insurance. At no time had he been notified by PG&E that there was a possibility he might be covered by workmen's compensation.

The California Supreme Court stated that under regulations of the Division of Industrial Accidents, PG&E (1) *should either have notified Reynolds of the possibility of his being entitled to workmen's compensation benefits;* or sent him (2) *a notice rejecting any possible future claim for benefits.*

Said the Court: "The clear purpose of these rules is to protect and preserve the rights of an injured employee who may be ignorant of the procedures or, indeed, the very existence of the workmen's compensation law. Since the employer is generally in a better position to be aware of the employee's rights, it is proper that he should be charged with the responsibility of notifying the employee, under circumstances such as those existing here, that there is a possibility he may have a claim for workmen's compensation benefits. . . . Since PG&E was obligated to give the notices prescribed by the administrative rules and failed to do so, it may not raise the technical defense of the statute of limitations to defeat petitioner's claim."

Conclusion.

We would respectfully submit that Petitioners have neither factually nor legally established their defense of the Statute of Limitations.

All of the facts in the case clearly establish that Respondent received compensation benefits within the meaning of *Labor Code Section 5405* as the employer provided wages and furnished medical benefits subsequent to her industrial accident.

The principles of law expounded in *Morrison, London Guaranty and Insurance Company, Miheshah, Cranch and Reynolds,* clearly establish that the benefits furnished by the employer were compensation benefits within the meaning of *Labor Code Section 5405.*

The law in California is quite clear on the subject, in that the furnishing of these benefits, *i.e.,* the employer's payment of premiums and salary subsequent to an industrial injury are in fact the furnishing of compensation benefits. *Miheshah* and *Morrison* stand for the proposition that the Statute of Limitations is not a defense when benefits are furnished either by payment of wages during the period of disability or the payment of health insurance premiums. Knowledge by the employer is not required—it can be inferred from the facts of the case.

Respondent respectfully submits that there are no Federal issues raised by Petitioner's Petition for Writ of Certiorari other than the Constitutionality of the Califor-

nia Workers Compensation Act, and that issue was decided on March 6, 1917—almost sixty years ago.

> "The cost of the product should bear the blood of the workers." *Stertz v. Industrial Insurance Commission* (1916) 91 Wash. 588, 188 Pac. 256. The Compensation Acts were put on the books to aid injured workers—not to make profits for insurance companies nor to relieve employers from Workmen's Compensation liability. *Horowitz,* 14 *N.A.C.C.A. L.J. 36, 42.*

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROSE, KLEIN AND MARIAS,
By HOWARD N. LEHMAN,
Attorneys for Respondent.

APPENDIX 1.

Minutes of Hearing (and Summary of Evidence).

State of California, Department of Industrial Relations, Division of Industrial Accidents, Workmen's Compensation Appeals Board.

Jane E. Reilly, aka: Le Brun, Applicant vs. Georgia Pacific Corporation, Self Insured Defendants. Case No. 73 LA 381 497.

Place and Time: Los Angeles, Dept. 15; July 5, 1973, 1:30 p.m.

Referee: Romaine Harper.

Reporter: Carol J. Kozar

Appearances: Applicant; Rose, Klein & Marias, by Howard H. Lehman, Attorneys for Applicant; Rowen and Lautman, by Kenneth H. Rowen, Attorneys for Defendants.

Witnesses: Phillip Douglas Kelly; Kevin Joseph Reilly.

Exhibits: Applicant's 1—Report of Dr. Beehler; Applicant's 2—Excerpt from medical record of Dr. Beehler and Dr. Rogers, consisting of copy of letter dated June 29, 1971 (released to custody of Applicant's counsel for copying and refiling; Defendants' A—3 Xerox copies of receipts bearing date February 17, 1971; Defendants' B—Xerox copy of petty cash receipt dated February 14, 1971.

The following facts are admitted:

1. Jane E. Reilly, also known as Jane E. Le Brun, born August 8, 1949, while employed on February 16, 1971 in the City of Industry, as a secretary, by Georgia Pacific Corporation, permissibly self-insured, claims to

have sustained injury arising out of and occurring in the course of her employment.

2. No attorneys' fee has been paid or arrangement made.

ISSUES

1. Statute of Limitations and estoppel *re* Statute of Limitations.

2. Injury arising out of and occurring in the course of employment.

3. Reimbursement for self-procured medical treatment.

4. Need for further medical treatment.

5. Earnings at date of alleged injury.

6. Nature, extent and duration of disability.

7. Apportionment.

8. Reasonable attorneys' fee, including Labor Code Section 5710.

9. Medical-legal costs.

SUMMARY OF EVIDENCE

PHILLIP DOUGLAS KELLY was called by Applicant, defendants' motion for continuance having been denied, was sworn and testified substantially as follows:

He was employed by defendant company in 1962 and in February 1971 was branch manager of the City of Industry branch, supervisor over 20-25 employees, and Applicant was his personal secretary. She spent an hour or two a day taking his dictation and typing his memoranda and letters. She answered his telephone, and she spent the rest of the time working on ordering and inventory control. Her earnings were

about $375.00 per month, as he recalls, with overtime for in excess of 40 hours. All overtime had to be approved in advance by witness, and he gave no blanket approvals in advance for overtime.

Witness left defendant company for a better offer at a higher pay on April 30, 1971 and has been executive vice president of Pacific Wood Products since that date. He is here under subpoena.

Defendant company had put on an annual dealers' meeting for about 5 years and had one scheduled for February 17, 1971. The purpose of the meeting was to present new products to lumber dealers in the area for possible sale. It was to be a dinner held at the California Country Club. They expected about 200 lumber dealers to attend, at defendants' expense.

All of the girls in the office (4 of them including Applicant) were invited to this dinner, so that no feelings would be hurt, but Applicant was required to attend for the purpose of getting to know customers. Applicant talked to people on the telephone concerning orders, and some of these people had asked witness what Applicant looked like. One of the office girls usually participated in the drawing and awarding of door prizes at this annual affair, but it had not been decided which girl would do this on February 17, 1971. Other employees required to attend the dinner were the switchboard operator, the accounts receivable clerk, all sales personnel, but not the cardex girl.

On February 16, 1971, witness instructed Applicant to obtain door prizes (usually a pen set) and a registration book for the meeting the following evening. They were both in the office, and it was around 4:15, 4:30, while her usual quitting time was 5:00 p.m. He

asked if she had made arrangements for the door prizes, and she said yes. No one else was present at the conversation. He said why didn't she go pick them up right then. She asked if she could leave, and he said yes. She left.

She was to be paid for the time she spent getting the prizes and also to be paid overtime for her attendance at the dealers' meeting. The door prizes were to be purchased out of the petty cash fund, which is money belonging to defendant company, but witness does not recall whether Applicant took money from the fund before going out to do the shopping, nor does he recall whether Applicant or some other girl was in charge of the petty cash fund that week. There were two cash funds in the office, (1) the petty cash and (2) the receipts on sales, each handled by a different person. He believes Applicant was in charge of the petty cash fund in February 1971. The one taking petty cash is supposed to make out a slip but sometimes they would buy the things with their own money and bring back a receipt. The fund was replenished monthly.

He does not recall what, if anything, was said about paying for the items, or whether he handed Applicant petty cash on the spot—no recollection one way or the other.

He does not know whether Applicant planned to return to the warehouse with the items that night or whether she planned to take them home with her and keep them overnight and bring them in the next day. She would have been free to do either. He recalls it was a rainy day and it was dark at the time he and Applicant had their conversation.

Witness was told in the office at 8:00 a.m. the next morning that Applicant had had a bad accident and

was in the hospital. It was common knowledge in the office when he arrived.

Applicant had not returned to work by the time witness left the company.

Witness had authority to and did authorize the continuance of Applicant's salary while she was off work, to help her defray medical expenses and because she had been a good employee. He informed the regional manager, Bob Smith, of his decision within a few days after the accident. Witness does not know if Applicant stayed on the payroll after witness left the company. Mr. Smith said, "Fine." Witness does not know what other branch managers would do in such a situation.

With respect to employees earning more than Applicant, possibly around 400 and up, he thinks, there was insurance to take over after they had been absent for 30 days, but Applicant did not have a high enough salary to qualify for this plan.

Defendant company had a group medical policy with Prudential Insurance Company at the time of Applicant's accident. Witness is not sure whether the company paid the entire premium or only part of it. He cannot recall this even as to his own medical insurance he had with the company.

CROSS-EXAMINATION:

He gave Applicant's attorneys a written statement about two months ago and reviewed it a week ago (producing it).

As his private secretary, Applicant worked on specific projects for witness. She was in charge of stock received, records (inventory). She did not fill out medical insurance or workmen's compensation claims

forms for employees, but thinks the accounts receivable girl did it. There were other men other than witness who might very well request secretarial help, and he is sure Applicant would have been cooperative. All of the people in the office worked well together and divided up the duties.

Witness thinks the conversation with Applicant about picking up door prizes was on a Tuesday, but positive it was the night before the dealers' meeting. He had sent Applicant out on errands for him before during regular working hours. Applicant did not tell him what she intended to do later in the afternoon or evening of February 16, 1971 after buying the door prizes, except that she said she was going to pick up a new dress for the dealers' meeting to be held the next night. She did not mention that she had out-of-town family visiting her.

He thinks she said she was going shopping in Hacienda Heights, or some place in that vicinity, which he understands to be east of the City of Industry. Witness himself lived in El Monte and estimates the distance between defendants' plant and Hacienda Heights is about 15 miles. Traffic was heavy, and it may have been raining when Applicant left.

Witness does not recall whether he delegated to any other girls in the office the task of procuring supplies for the dealers' meeting. Witness does not recall signing any petty cash vouchers for any girl other than Applicant in connection with the February 17, 1971 meeting.

Applicant did not tell witness where she was going to pick up her dress. He knows she was going to get a new dress some place east of the warehouse but does not recall how or when this came to his attention.

He learned later on around the office where and when the accident happened. It was common knowledge in the office at that time. He never learned whether Applicant was on her way to a stationery store, a dress store or some place else at the time the accident occurred. He does not know whether she had already done the company shopping or picked up her dress at the time the accident happened.

Witness is sure it is true that an individual representing a stationery supply company made a weekly visit to the office, but witness made no arrangements with such a person in the week preceding the dealer meeting. Witness did not handle the arrangements for food or drink or setup of the dealer meeting and does not recall who did. All of it is usually turned over to one person. It could have been Applicant—it could have been Rick Houck, the "assistant to the branch manager," he worked under witness. Witness thought the dealer meetings were a bore.

Applicant was not a supervisor over the other girls in the office.

Metal or plastic name tags were required to go along with the registration book. He does not recall specifying that they wanted a flashy orange book that would catch the eyes of the dealers, or any other details about the book. He said to her to be sure to get the door prizes, the registration book and whatever else was needed. Certainly the company wanted to do up the meeting in good style, and he may have specified a flashy book but does not recall it.

The dinner meeting was a command performance for all the girls in the office, except the cardex girl, as any one who answered witness' telephone had to attend.

Applicant had been a PBX operator with the company for years before she became witness' personal secretary and had been ordered to attend dealer meetings in prior years.

Witness does not know what he would have done if an employee who was off sick was receiving disability benefits from the State of California so far as the policy for continuing the employee on the payroll is concerned. Probably he would have telephoned the Portland home office about that.

RE-DIRECT:

Applicant had authority to purchase the items any place she chose.

Prior to the accident witness considered Applicant to be a conscientious and loyal employee.

RE-CROSS:

With respect to Exhibit A, witness does not recall authorizing the funds for the items to be disbursed to Earlene Dooner, known to him as "Mickey," and does not know if she actually purchased the items. These receipts were kept in the regular course of defendants' business.

REBUTTAL:

The dealer meeting set for February 17, 1971 was not cancelled because of Applicant's accident on February 16, 1971. Witness does not recall authorizing some one else to purchase the door prize and registration book, etc., but must have done so. Such items were present at the meeting, which was held on February 17, 1971. Witness does not recall the color of the registration book.

Witness does not recall sending any one to pick up items from Applicant's vehicle or receiving any item from Applicant or her vehicle.

SURREBUTTAL:

Regarding Exhibit B, witness does not recall authorizing Mickey to purchase a registration book on the 14th. She worked in the office as a hardwood lumber cardex specialist.

Witness' present business address is 900 Wilshire Blvd. and present home address is 3115 Stevely, Long Beach.

KEVIN JOSEPH REILLY was called by Applicant and sworn and testified in substance:

He is Applicant's father and knows of her accident. She was driving his 1963 GM ½ ton pick-up truck with two-door cab at the time of the accident, because her brother and his wife were visiting from out of town and she had loaned them her car.

On the day after the accident, witness saw the vehicle in the police impound yard. It was badly damaged "totaled" and the doors had been ripped off. Rain had come in on to the seat. There was a dress lying on the seat with a tag on it, such as a new dress would have, but it was not in a box. It was wet. There was also "that autograph book" she had purchased the night before, with a well fountain pen attached to it. They were all wet.

Witness saw Applicant at the hospital "just for a second" and was told she had been conscious and had spoken but had just lapsed into unconsciousness. She did not regain consciousness for 30-40 days.

CROSS-EXAMINATION:

Witness learned of the location of the wrecked truck from the highway patrol, where he obtained a copy of the accident report. He picked up Applicant's purse at the hospital, where she was taken by ambulance. Witness did not speak to the highway patrolman at the scene but did speak to the ambulance driver and signed the consent forms for Applicant's admission and supplied requested information as best he could at the time.

Witness left the "autograph book" in the truck. The dress was brought home.

Witness had just gotten home from work when they received a telephone call from the hospital. He thinks it was between 6:00 and 7:00 p.m. It was dark.

DISPOSITION:

Continued on notice for 2½ full consecutive days.

Copies of these minutes to be served upon the parties forthwith.

ROMAINE HARPER, Referee

APPENDIX 2.

Order Admitting Documentary Evidence and Notice of Intention to Submit.

Workmen's Compensation Appeals Board, State of California.

Jane E. Reilly, also known as Jane E. Le Brun, Applicant, vs. Georgia Pacific Corporation, Defendant. Case No. 73 L.A. 381-497.

GOOD CAUSE APPEARING THEREFOR:

IT IS ORDERED that the following documents be and they are hereby admitted in evidence:

Report of A. Vincent Gerty, M.D., dated November 1, 1973, The Minnesota Multiphasic Personality Inventory dated November 1, 1973, and reports of Gertrude J. Jackson, M.S., dated November 7, and 12, 1973, as defendant's Exhibit N; Affidavit of Phillip Douglas Kelly, dated March 26, 1973, as applicant's Exhibit 6 for identification only.

"DEFENDANT'S EXHIBITS" filed November 20, 1973, as defendant's Exhibit O for identification only.

IT IS FURTHER ORDERED that the parties herein are allowed 10 days from the date of this Order within which to request further proceedings; case otherwise submitted.

DATED AT LOS ANGELES, CALIFORNIA this 29th day of November, 1973.

ROMAINE HARPER
Referee
WORKMEN'S COMPENSATION
APPEALS BOARD

Served: 11/29/73 Marie Dailey, Rose, Klein and Marias, 727 West 7th Street, Los Angeles 90017; Rowen and Kanter, 4419 Van Nuys Blvd., Sherman Oaks 91403.

Affidavit of Phillip Douglas Kelly.

Workmen's Compensation Appeals Board, State of California.

In re the matter of the Application of Jane E. Reilly (Le Brun).

State of California, County of Los Angeles—ss.

Phillip Douglas Kelly, being first duly sworn, deposes and says:

1. That I was the manager of the City of Industry office of the Georgia-Pacific Corporation during the month of February, 1971;

2. That the address of said office was at that time, and is today, 14750 Nelson Avenue, Industry, California, 91744;

3. That Jane E. Reilly was employed by the Georgia-Pacific Corporation at its City of Industry location during and preceding the month of February, 1971, for the purpose of rendering services in the capacity of personal secretary to the undersigned;

4. That on or about February 16, 1971 I directed her in my capacity as her supervisor to pick up several door-prizes for a dealer meeting which was to be held, I believe, the next night;

5. That on February 16, 1971, while in the employ of Georgia-Pacific Corporation, she had left the office for the purpose of gaining the door-prizes and, while so engaged, was involved in a motor vehicle accident;

6. That as a result of said accident, she suffered severe injuries to her person; and,

7. That in light of the nature of these injuries, I directed, and the company so responded, that her salary be continued as a benefit to her to help defer medical charges being incurred as a result of the injury and that her salary was so continued for several months after the accident aforementioned.

I declare that if I were called as a witness, I could testify to all of the foregoing facts.

Executed at Los Angeles, California, on the 26 day of March, 1973.

I declare under penalty of perjury that the above is true and correct.

/s/ Phillip Douglas Kelly
PHILLIP DOUGLAS KELLY

ACKNOWLEDGMENT

Statement of California, County of Los Angeles,—ss.

On March 26, 1973, before the undersigned, a Notary Public for the State of California, personally appeared Phillip Douglas Kelly, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

/s/ Myrtle F. Feenberg
Notary Public of the State of California

[Seal]